Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	CCB/CPD File No. 98-63
	)	
Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA	)	CC Docket No. 98-157

COMMENTS OF MEDIAONE GROUP

Pursuant to the Further Notice of Proposed Rulemaking (FNPRM) herein,[1] MediaOne Group (MediaOne) submits these Comments. The parent company of one of the largest cable television multiple system operators in the United States,[2/] MediaOne is a leader in bringing broadband communications – including voice, video, and data services – to residential customers. MediaOne subsidiaries provide residential, facilities-based competitive local telecommunications service in Atlanta, Georgia; Los Angeles, California; Pompano Beach and Jacksonville, Florida; several communities surrounding Boston, Massachusetts; Detroit,

[1] In the Matter of Access Charge Reform, CC Docket No. 96-262 , Further Notice of Proposed Rulemaking (August 27, 1999).

[2/] MediaOne expects to complete a merger with AT&T Corp. in the first quarter of 2000.

Michigan; and Richmond, Virginia. MediaOne plans to begin serving more residential markets in the near future.

THE COMMISSION SHOULD UTILIZE AN APPROPRIATE BENCHMARK TO CONTROL CLEC ACCESS RATES.

In this proceeding, the Commission intends to address concerns that some competitive local exchange carriers (CLECs) are charging exorbitant rates to interexchange carriers (IXCs) for exchange access service.[3] The Commission does not actively regulate CLECs' access charges, and some CLECs have apparently taken advantage of the situation. The FNPRM expresses a preference for a "marketplace solution."[4] It proposes several such solutions, seeking comment on them.

The Commission is correct in wanting to utilize market forces to address this issue. But implementing the proposals put forth in the FNPRM will, in most cases, involve significant practical challenges; they may indeed not be feasible. More important, the Commission must ensure that a marketplace solution does not damage nascent local competition. The telecommunications landscape is today dominated by a small number of large players, including the large IXCs. If the large IXCs are put in a position where they can dictate to the CLECs – many of which are relatively small operations – they might thereby swing the pendulum too far in the other direction, forcing the CLECs to accept uneconomically low access charges, and putting their ultimate survival in jeopardy.

These factors should preclude consideration of several of the proposals set forth in the FNPRM. Thus the Commission asks whether it should permit IXCs to charge different rates to

[3] The Commission has properly focused its attention on the charges to IXCs for switched access. Charges imposed on end users (the Subscriber Line Charge) and special access services are already subject to market forces that preclude a CLEC from establishing unreasonably high rates.

their end users within a geographic area, thus enabling them to pass through excessive access charges.[5] Unfortunately, the Commission will likely find that IXC billing systems cannot readily adapt to issuing unique bills to the customers of each LEC from whom they obtain exchange access. Moreover, the IXCs will correctly complain that this solution imposes the burdens on them, including the need to deal with dissatisfied customers, who likely will not understand (or care) that their chosen LEC has given rise to the problem. Rather, customers will simply blame their IXC.

The mandatory detariffing of CLEC access charges[6] raises different concerns. Even assuming the legality of such a proposal,[7] it raises troublesome concerns for CLECs. Most obviously, if a CLEC cannot file tariffs to govern its provision of exchange access, it will need to establish contractual relationships with every IXC to whom it provides exchange access – including those who merely terminate calls to the CLEC's customers. As a practical matter, a CLEC would need some sort of relationship with every IXC. This would impose an impossible burden on most CLECs, particularly given that most IXCs would wish to negotiate a unique agreement. Very few CLECs have the resources to undertake this burden. Moreover, if mandatory detariffing were to be coupled with a Commission pronouncement that IXCs have the option of not taking a CLEC's access services, the large IXCs could use their leverage to force the small CLECs to accept uneconomically low access charges. No CLEC could long survive if

[4] FNPRM, para. 238.
[5] Id., para. 244.
[6] Id., para. 246.
[7] As the FNPRM notes (at para. 246), the Commission's attempt to impose mandatory detariffing on the provision of interstate long distance services has been stayed by the Court of Appeals for nearly three years.

its customers could not get the large IXCs' service. Mandatory detariffing could seriously injure local competition.

The Commission likely will not find an acceptable "pure" marketplace solution; that is, if the Commission would avoid the problems noted above, it must incorporate some regulatory oversight into any solution to this problem. The FNPRM includes a proposal for the establishment of a benchmark by which to measure the reasonableness of CLEC access charges,[8] and MediaOne believes such a measure holds the most promise to resolve the problems the Commission seeks to address here.

The Commission might incorporate a benchmark into its solution in any of several ways. First, the Commission could simply require all CLECs to keep their access rates at or below the benchmark. Similarly, the Commission could permit the CLECs to charge the IXCs no more than the benchmark rates, but permit them to charge any excess to their end-user customers, thereby bringing in a stronger marketplace influence.[9] With either of these proposals, the Commission would need to afford CLECs the opportunity to demonstrate that they need higher rates to cover their costs. Finally, the Commission could allow CLECs to charge whatever access rates they want, but give IXCs the opportunity to file complaints if they believe a CLEC's rates are too high; rates at or below the benchmark would be conclusively presumed reasonable. Any of these proposals would limit the access charges imposed on the IXCs by CLECs.

Effecting them, however, requires the creation of an appropriate benchmark. The benchmark cannot depend on the CLEC's particular costs of providing the service; the

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[8] Id., para. 247.

[9] See, id. The practical effect of this would very likely be the same as an outright prohibition on charges in excess of the benchmark. Adverse customer reaction and the difficulties of

Commission would as well impose rate base-rate of return regulation on the CLECs, something no one wants. The benchmark also must be set independent of CLEC or IXC influence and it must be readily verifiable. Finally, the benchmark must be a rate the Commission can confidently characterize as "reasonable." All these criteria point strongly in the direction of using incumbent local exchange carrier (ILEC) rates to establish the appropriate benchmark. ILEC access charges are closely regulated by the Commission and can be presumed reasonable; they are set in public proceedings with no opportunity for undue influence by the CLECs or the IXCs; moreover, the Commission's price-cap regime continues to drive the rates ever downward, thus providing additional confidence in their reasonableness; finally, the ILECs' rates are easily obtained and verified by all interested parties. The Commission will not likely find a better benchmark.

Using the ILECs' rates as the CLEC benchmark requires at least two qualifications. Though the Commission allows CLECs to file tariffs to take effect on one day's notice, no CLEC can instantaneously change its tariffs to match the ILECs'. An ILEC tariff will likely be in effect for several days before the CLECs can obtain it, and preparing and filing its own tariffs will take a CLEC some time. If the benchmark is always set equal to the ILEC rates, CLECs will temporarily fall out of compliance whenever the ILECs change their rates. Moreover, though the price-cap ILECs generally revise their exchange access tariffs annually, those annual filings frequently involve small "true-up" filings to implement miniscule changes in individual rates. While these small changes can have significant effect on the revenues of a large ILEC, they would have almost no revenue impact on a CLEC (or its IXC customers); indeed, the revenue

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implementing end-user billing would make it a very unappealing option for most, if not all, CLECs.

effect of such filings can literally be less than the Commission's filing fee for processing tariff changes.

To address these problems, MediaOne believes the Commission should require mirroring CLECs to file their tariff revisions in time to be effective on October 1 of each year.[10] That would give time for the price-cap ILECs' annual filings to have "stabilized" sufficiently so that the ILECs' rates will not likely change significantly until the next annual filing. The Commission could add a condition to the effect that, if between annual filings, an ILEC reduces a rate by, say, ten percent or more, the affected CLECs must revise their tariffs within sixty days after the ILEC tariff takes effect. CLECs would be free to file mirroring rate increases at any time.

The second qualification arises from the fact that a single CLEC may serve customers within the serving areas of multiple ILECs. In California, for example, MediaOne serves customers within the territories of both SBC and GTE. MediaOne has found it impractical to create and bill different access charge rates for these two territories, and so has elected to mirror SBC's rates throughout its service area because more of that area is within SBC's territory. The Commission will need to create a specific rule governing this selection. The simplest such rule would probably be to use as the benchmark in any state the rates of the RBOC within whose territory the CLEC provides service; if there is no RBOC, then use the largest ILEC (in terms of customer lines within the state) within whose territory the CLEC provides service.

[10] This assumes, of course, that the ILEC is subject to the annual-filing requirement. If that is not the case, or if the Commission substantially changes or does away with that requirement, a different date might be necessary.

With these qualifications, MediaOne believes that mirroring the ILEC access charges will best ensure the reasonableness of CLEC access rates without unnecessarily jeopardizing local competition.

CONCLUSION

While MediaOne appreciates the need to address the problem of excessive CLEC access charges, we believe the Commission must take care not to injure local competition as it does so. Stopping a (relative) handful of CLECs from price gouging must not come at the price of subjecting all CLECs to measures that may threaten their very existence. As discussed above, MediaOne believes the Commission can walk this tightrope by implementing controls utilizing an appropriate benchmark based on ILEC rates, and we urge the Commission to adopt such controls.

Respectfully submitted,

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October 29, 1999

CERTIFICATE OF SERVICE

I, Margaret D. Davis, hereby certify that on this 29th day of October, 1999, I caused an original and eight (8) copies of the foregoing "COMMENTS OF MEDIAONE GROUP" to be served by hand delivery to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, DC 20554. A true and correct copy of the foregoing was also served by hand delivery on the following:

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